

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee/Cross-Appellant,

v

MICHAEL S. WEISENFELD,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED

February 26, 1999

No. 204153

Ingham Circuit Court

LC No. 96-070173 FH

Before: Jansen, P.J., and Sawyer and Markman, JJ.

PER CURIAM.

Defendant appeals from his jury conviction of ten counts of false pretenses over \$100, MCL 750.218; MSA 28.415. The trial court sentenced defendant to three years' probation with the first twelve months to be served in jail and ordered him to pay \$4,570 in restitution to cover only the amount of money received by defendant during the ten-week period covered by the charges. Plaintiff has cross appealed, challenging the trial court's restitution decision. We affirm defendant's conviction but remand for further proceedings regarding restitution.

Defendant first argues that there was insufficient evidence presented by the prosecutor to establish that The Accident Fund Company ("the Fund") detrimentally relied on any of his statements in deciding to issue benefit checks. This Court reviews issues regarding sufficiency of the evidence by examining the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could conclude that the essential elements of the offense were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Detrimental reliance on the false representation by the victim is an element of false pretenses. *In re Jory*, 443 Mich 403, 413; 505 NW2d 228 (1993). The misrepresentation must concern a present or existing fact, or a past fact or event; however, it may not concern a future event. *People v Reigle*, 223 Mich App 34, 38; 566 NW2d 21 (1997).

While defendant was receiving worker's compensation benefits from the Fund, he began working for Euclid Medical Group ("Euclid"). For about nine months, defendant collected worker's compensation benefits from the Fund while also receiving a salary from Euclid. Defendant did not reveal the fact of his employment to the Fund; in fact, after he began working he twice represented

during interviews with a doctor and a representative of the Fund that he was not employed and had not been employed. When specifically confronted with a statement allegedly made to the Fund's representative by a member of his household indicating that defendant was not home because he had "just left for work," defendant denied that he was employed. Also, toward the end of the nine-month period, he filed an application for mediation in which he claimed that he was not employed and had not been employed. The claims examiner for the Fund testified that she relied on defendant's representations that he was not working when periodically deciding to authorize continued worker's compensation benefits payments. These facts, considered in a light most favorable to the prosecution, established that the Fund detrimentally relied on misrepresentations to continue benefits payments to defendant. This Court therefore concludes that sufficient evidence of detrimental reliance was presented by the prosecution and that defendant's convictions must be affirmed.

Defendant next contends that the trial court erred by denying his motion for a change of venue. Defendant asserts that venue was not proper in Ingham County. A trial court's determination of venue is renewed de novo on appeal. *People v Fisher*, 220 Mich App 133, 145; 559 NW2d 318 (1996). "Venue is a part of every criminal case and must be proved by the prosecutor beyond a reasonable doubt." *Id.* at 145. However, venue is not an essential element of an offense. *People v Meredith (On Remand)*, 209 Mich App 403, 408; 531 NW2d 749 (1995). In MCL 762.8; MSA 28.851, the Legislature has provided that

[w]henver a felony consists or is the culmination of 2 or more acts done in the perpetration thereof, said felony may be prosecuted in any county in which any 1 of said acts was committed.

This Court stated in *Fisher, supra* at 152:

Thus, in applying the statute [MCL 762.8; MSA 28.851], the place of commission of an act is not limited to the place of the defendant's physical presence. An act that has effects elsewhere that are essential to the offense is, in effect, committed in the place where the act has its effects.

In the instant case, defendant submitted applications for mediation to the Fund and the Department of Labor (both in Ingham County) and in both of these applications defendant claimed that he was not and had not been employed. Accordingly, one or more acts in perpetration of the offense occurred in Ingham County. Under the statute and the above case law, venue was therefore proper in Ingham County. Also, because the Fund decided to continue benefits based on reports reviewed in Ingham County and because it suffered the loss in Ingham County, venue was proper and defendant's acts ultimately had their effect in that county. *People v Flaherty*, 165 Mich App 113, 118-115; 418 NW2d 695 (1987).

Plaintiff asserts in its cross appeal that the trial court erred by failing to order full restitution, or by failing to articulate its reasons for ordering partial restitution. We agree, and review the decision to order less than full restitution for an abuse of discretion. *People v Guajardo*, 213 Mich App 198, 201-202; 539 NW2d 570 (1995).

At sentencing, the trial court stated:

You are to pay restitution to the Accident Fund in an amount of \$4,570. The Court finds that the proofs at trial support that that is the accurate amount of restitution, and I decline to give any weight to amounts that were received outside of the 10-week period for which he is charged. So he may well owe more than that, but I'm focusing only on the 10-week period during which he was charged.

The trial court did not explain why it was only focusing on the ten-week period that encompassed the charges. At the time of defendant's sentencing on May 21, 1997, the Crime Victim's Rights Act, MCL 780.766(2); MSA 28.1287(766)(2), provided that the sentencing court "shall order . . . that the defendant make full or partial restitution to any victim of the defendant's course of conduct." MCL 780.766(3); MSA 28.1287(766)(3) provided that if the court only ordered partial restitution, it "shall state on the record the reasons for that action." Our Supreme Court held in *People v Gavan*, 456 Mich 264, 270; 571 NW2d 503 (1997), that this statute "authorizes the sentencing court to order criminal defendants to pay restitution to all victims, even if those specific losses were not the factual predicate for the conviction." The Court concluded that a defendant's repeated scheme to defraud his customers fell within the meaning of the phrase "course of conduct" and justified the award of full restitution for amounts falling outside the actual charged offenses. The same conclusion should apply in this case. The uncontested evidence presented at trial established that defendant was employed by Euclid from January 18 or 19, 1995, until January of 1996 and that he was paid by Euclid starting on January 26, 1995. Defendant collected worker's compensation benefits from the Fund for this same period of time up until the benefits were terminated in October of 1995. Therefore, full restitution for the Fund should cover the period from January 18, 1995, until October of 1995. The trial court did not comply with the statute because it did not order full restitution and it did not state the reasons it was ordering only partial restitution. MCL 780.766(3); MSA 28.1287(766)(3). Accordingly, this Court remands this case to the trial court for further proceedings with respect to restitution. Pursuant to the statute and *Gavan, supra*, the trial court should order full restitution for defendant's entire course of conduct or explain why it is ordering less than full restitution.

Defendant argues that plaintiff failed to request a hearing on this question and therefore it is not preserved for appeal, citing *Gavan, supra* at 276. However, the evidentiary hearing that is referenced in *Gavan, supra*, is with respect to the *amount* of restitution where that amount is contested by a defendant. In this case, there was no dispute between the trial court and plaintiff regarding the total amount that defendant was overpaid by the victim. Rather, the dispute is whether the entire amount should have been ordered as restitution.

Defendant's convictions are affirmed and the case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ David H. Sawyer

/s/ Stephen J. Markman